

1 IBRAHIM NASSER
2 PO Box 5626
3 CHULA VISTA, CA 91912

4 Plaintiff In Pro- Per

7 RECEIVED

8 JUL 12 2017

9 BY MAIL

10 In The US. District Court
For Eastern District of Missouri

11 ENERGIZER BRANDS II LLC

12 Plaintiff,

13 Vs.

14 IBRAHIM NASSER & SERIOUS SCENTS

15 Defendants,

Case No.: 4-17-CV-00876 JMB

1. Defendants moves this court to Dismiss Plaintiff's cause of action Under Federal Rule 41.
2. Dismissal of Actions lack of subject matter jurisdiction
3. Subject Matter Jurisdiction established in US. District Court Southern District of California Pre Chamber Rules,
 - No oral Argument Unless Separately Ordered by The Court

21 **NOW COMES THE DEFENDANTS:**

22 Ibrahim Nasser & Serious Scents a California a Sole-Proprietorship owned and operated by Ibrahim
23 Nasser.

24 **HEREBY NOTICES THIS HONORABLE COURT AND THE TRIER OF FACT:**

25 The plaintiff in this cause of action that this motion to dismiss plaintiff case and cause of action is tendered
26 to the court. Under Federal Rule 41. Dismissal of Actions (b.) Involuntary Dismissal; If he plaintiff fails to
27 prosecute, or to comply with these rules, or a court order, a defendant (Defendant Nasser) moves to
28 dismiss the action any claim against defendant Nasser and his company .

29 Unless the dismissal order states otherwise, a dismissal under this subdivision
30

1 (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to
2 join a party under Federal Rule 19—operates as an adjudication on the merits.

3 **UNDER RULE 19 THIS FILING DOES NOT, NOR IS IT INTENDED TO CAUSE OR CREATE A**
4 **GENERAL APPEARANCE ON THE PART OF THE DEFENDANTS** before this court on any issues
5 brought by the Plaintiff. The Defendant by and through this law in motion is with purposeful intent legally
6 avoiding any such appearance that would or could create subject matter jurisdiction with this court.
7

8 **DEFENDANT SUBMITS TO THE COURT IN MOTION TO DIMISS THE PLAINTIFF SUMMONS AND**
9 **COMPLAINT AND HAVE SAME DISMISSED WITH PREJUDICE:**

10 Plaintiff offers the following for the courts consideration to **DEFENDANTS ENERGIZER BRANDS II LLC**
11 with this memorandum in support of motion to dismiss plaintiff's cause of action dated 06-30-2017 The
12 legal filing was received by plaintiff via us mail on July 5th, 2017
13

14 **THE ISSUE RAISED BY THE OPPOSITION ATTORNEY IS A DIRECT LEGAL CHALLENGE THAT**
15 **STATES THE PRESENT COURT IS NOT THE COURT OF PROPER JURISDICTION.** This Direct Legal
16 Challenge by DEFENDANTS ENERGIZER BRANDS II LLC attorneys. The Defendant now addresses and
17 expose to the court and trier of fact the law which makes this type and kind of claim an incomplete attempt
18 to play the court for a fool. This is an outright assault upon justice and the law that attorneys of this high
19 legal caliber and experience knew or should have known was a complete unfounded fabrication. This
20 response is based upon the law applied to the facts.
21

22 **SERVICE OF THE PLAINTIFFS NASSERS FEDERAL COMPLAINT FILED IN SOUTHERN DISTRICT**
23 **COURT OF CLAIFORNIA ON DEFENDANTS ENERGIZER BRANDS II LLC WAS COMPLETED ON**
24 **JULY 3, 2017:**

25 See exhibit #1 proof of service attached hereto. Plaintiff was just served personally served with a Federal
26 Filing in US. District Court Eastern Division of Missouri Eastern Division 4:17cv 9876 JMB filed 03/13/2017
27 More than three months has passed since the filing of Complaint in US. District Court Eastern Division of
28 Missouri Eastern Division.
29
30

1 ENERGIZER BRANDS II LLC attorneys on Page 5 lines 3-15 requests a stay and presents the false claim
2 that first to file is the proper plaintiff which establishes proper court jurisdiction. This bold declaration by the
3 attorneys does not take into account the following, which guts the entire legal argument as being an
4 unfounded claim.

5 PERSONAL JURISDICTION IN THE FEDERAL COURTS: is governed by rule 4 of the Federal Rules of
6 Civil Procedure.

7 RULE 4 DIRECTS EVERY FEDERAL DISTRICT: Court to follow the law on personal jurisdiction that is in
8 force in the state courts where the federal court is located.

9 JURISDICTION OVER THE PARTIES (personal jurisdiction) relates to the question of whether someone
10 from another state, California, to defend against the lawsuit. California Alaska, New York, or Nevada can
11 be forced to come to the state where the lawsuit was filed (the "forum state") e.g. A PERSON IS SUBJECT
12

13 TO IN PERSONAM JURISDICTION ON ANY OF THE FOLLOWING THEORIES:

14 (1) Presence, i.e.,

15 *(Defendants Energizer Brands II LLC present in the state of California its sales have to be in the*
16 *millions of dollars. They are in every Wal-Mart and other stores in the uncounted thousands upon*
17 *thousands. Everyone knows the Energizer Brands this creates an unquestionable state presence and*
18 *establishes the Plaintiff right to be heard in California where his home of record and his little business*
19 *was born and continues to this very day.)*

20 (2) Being served with a copy of the summons and complaint

21 (Energizer Brands cannot declare that there was any lack of services upon them of the Plaintiff's
22 complaint which was properly filed and served with leave to amend upon Energizer Brands agent of
23 service.

24 (3) While physically present in the forum and California jurisdiction. (Energizer Brands has made a general
25 appearance in the California Federal Court. Please see exhibits 1-5 Energizer Brands have tender
26 responses far in advance of the Plaintiff being served with their Federal Court Complaint from another
27 jurisdiction.

28 (4) The physical presence of a defendant in the forum is a sufficient basis for acquiring jurisdiction over
29 him,
30

(The Energizer Brands Attorneys attempts to establish that because the Plaintiff has a web page. That webpage is enough to establish subject matter jurisdiction and a legal presence in the US. District Court Eastern Division of Missouri Eastern Division. Hence, A Defendant Who Has Never Set Foot In California which the Defendant Energizer Brands cannot not claim with any reasonable exaptation when that claim would be viewed as false. This is because the Energizer Brands dominate a market share in California that has sales in the millions. Then add to the legal mix the following) DOMICILE (RESIDENCE) ALONE is a basis for exercising jurisdiction over an absent domiciliary. See (Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1940).) I.e., Defendant Energizer Brands attorneys know or should know that their claim first to file does not legally have any legs in the State of California or the State of MISSOURI

JURISDICTION-DEFINITION AND PRINCIPLES 3.3 DEFINITION State Law

"Jurisdiction connotes the power to decide a case on the merits,"

See Wigglesworth v. Wyrick, 531 S.W.2d 713, 721[5-7] (Mo.banc 1976), (citing 21 C.J.S. "Courts", sec. Subject matter jurisdiction cannot be conferred on the court by agreement of the parties and cannot be waived. Fitzgibbons v. Director of Revenue, 891 S.W.2d 566, 568[2-4] (Mo.App. E.D. 1995).

It should be noted that the court is under a continuing obligation to notice lack of jurisdiction at any point during the pendency of a case.

"LACK OF JURISDICTION: or the failure of the information to charge an ordinance violation shall be noticed by the court at any time during pendency of the proceeding." Rule 37.51(b)(2).

Specifically, a defendant cannot be found to have waived lack of subject matter jurisdiction where no information has been filed by the prosecuting authority. Brown v. State, 3 S.W.3d 676, 678-79[4-6] (Mo.App.S.D. 2000).

3.7 JURISDICTION OVER THE PERSON The most common method of acquiring jurisdiction over the person of the defendant is by service of a summons on defendant by any of the means authorized in Rules 37.42-37.44.

As provided in Rule 37.42, the summons must be in writing and in the name of the prosecuting county or municipality; must state the name of the person summoned and his/her address if

Known; must describe the ordinance violation charged; must be signed by the judge or the clerk;

1 As the court can quickly see and understand filing a complaint in the State of Missouri does not create
2 subject matter jurisdiction or court jurisdiction until the complaint and summons has been filed and served
3 upon the defendant.

4 **DEFENDANT ENERGIZER BRANDS ATTORNEYS KNOW OR SHOULD KNOW:**

5 the legal ground he brings to dismiss against the Plaintiff violates Personal Jurisdiction In The Federal
6 Courts Law: which is governed by Rule 4 of the Federal Rules of Civil Procedure. Rule 4 Directs Every
7 Federal District Court to follow the law on personal jurisdiction that is in force in the state courts where the
8 federal court is located. Under the Rule 4 of the Federal Rules of Civil Procedure Defendant Energizer
9 Brands attorneys must fail. California and Missouri don't support the claim first filed gives jurisdiction. The
10 matter turns on who first served not who first filed.

11
12 **NEVERTHELESS, VALID PERSONAL JURISDICTION SUBJECT TO SERVICE OF A SUMMONS AND**

13 **COMPLAINT.** First served wins the legal day. Proof service was complete is found in the fact Defendant
14 Energizer Brands attorneys have waived all rights and claims of defective service or other court jurisdiction
15 by making a general legal appearance in the case and court at bar.

- 16 • So as to be compelled to defend a lawsuit in California the Plaintiff has provided this court that Defendant
- 17 Energizer Brands attorneys has gone above the minimum contact requirements
- 18 • The proper legal forum is the State of California as such the rules of court compel Defendant Energizer
- 19 Brands attorneys to appear and defend as they already have.
- 20 • The forum in the Federal Court in State of Missouri does not offend traditional notions of filing and service
- 21 of legal process it embraces it as defined in Rule 4 of the Federal Rules of Civil Procedure
- 22 • The Energizer Brands attorneys are violating the fundamental legal principals of legal fair play and
- 23 substantial justice and dues process of law.

24 See (International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).) I.e.,

25
26 (Energizer Brands attorneys claims also fail on the ground of the false claim of the Plaintiff doing business
27 in the State of Missouri . The court should note a single web page owned and operated by the Plaintiff
28 when palace against the fact that there are There are over 1 billion websites on the World Wide Web today.
29 This number proves the legal point that with odds like 1 billion to one that anyone could or would find or use
30 the Plaintiffs Web Page as a source of business presence in the State of Missouri would not come even

1 remotely close to satisfy the narrowest possible claim of business presence in State of Missouri No matter
2 how brief his stay might be. A billion to one chance of being seen or found in a state where the Plaintiff has
3 never been or sold anything to anyone in that state. All connections are elsewhere. The court should note:
4 No communication wherever made between Energizer Brands attorneys or the company in the State of
5 Missouri. See Exhibit #2 All correspondence was in Georgia and is a very-long ways away from the State of
6 Missouri See (Pennoyer v. Neff, 95 U.S. (5 Otto) 714, 24 L.Ed. 565 (1877).)

7
8 **ENERGIZER BRANDS ATTORNEYS HAVE AND CONTINUE TO TENDERED A UNVERIFIED**

9 **RESPONSES:** while satisfy the requirement of a general appearance by pleading and response which
10 creates jurisdiction with this court. Which is further confirmed by the fact that the responsive pleadings do
11 not make service an issue and there are no legal disclaimers made by the opposition attorneys that their
12 unverified response to a verified complaint are not to be taken as a general appearance and proof of
13 service and jurisdiction.

14 **THE DUE PROCESS CLAUSE DOES NOT PERMIT A STATE:**

- 15
 - To exercise personal jurisdiction
 - Over an individual or corporation
 - With which the state has
 - No contacts, ties or relations.

18 **BECAUSE THERE ARE NO CONTACTS WITH THE STATE OF MISSOURI** even ever so slight by the
19 Plaintiff and because Energizer Brands and their attorneys were proper notice and served far in advance of
20 any notice or service upon the plaintiff the Missouri Federal Court Filing must die a natural death because
21 the same issues cannot be adjudicated in two different Federal courts at the same moment in time.
22 Defendant is requesting that Energizer Brands to attorneys stipulate to the termination of the Missouri
23 complaint. As there are no issues that could be heard by that court that could not be quickly brought and
24 addressed by the present court.

25
26 Energizer Brands and their attorneys have the same legal rights and protection here as they do in Missouri
27 Federal Court. The only difference between the courts is the issue of inconvenient forum. There is the
28 matter also that the plaintiff is bring suit against defendant corporations and business who have a
29 continuing presence in the State of California where the plaintiff resides and his business is located. This
30 should establish this as the proper court of jurisdiction.

1 THE PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

- 2
- 3 1. Energizer Brands and their attorney's motion for judgment be denied with prejudice.
- 4 2. The trier of fact once and for all establishes for all time United States District Court
- 5 3. For The Southern District of California is the proper court of record and jurisdiction and venue for all
- 6 matters and issues pending.
- 7 4. Energizer Brands and their attorneys can and should stipulate to this court being the proper venue
- 8 and to provide the court with verified responses to verified complaints in United States District
- 9 Court for The Southern District Of California
- 10 5. Energizer Brands and their attorneys their attorneys are wasting the federal courts valuable time
- 11 with the ongoing frivolous motion to deny the Plaintiff his right to prove up trademark infringement
- 12 here in United States District Court for The Southern District of California
- 13 6. The plaintiff will not ask for sanctions against Energizer Brands and their attorneys as the court on
- 14 its on motion has the legal authority to make that happen. A warning from the court may be
- 15 sufficient

16 VERIFICATION OF PLEADING

17 Date July 10, 2017

18 IBRAHIM NASSER swears and affirms that the foregoing is true and correct under the penalty of perjury of

19 the laws of the United States of America.

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IBRAHIM NASSER
Defendant In-Pro-Per

TABLE OF CONTENTS & EXHIBITS

EXHIBIT # 1. Trademark certificate of registration dated January 5, 1095 low grenade serious cents sole proprietorship and owner.

EXHIBIT #2 Copy of complaint filed with United States District Court for the Southern District of California naming as a defendant energize your brands to LLC. Received by the court on July 19 2017

EXHIBIT: #3 response to Energizer Brands II LLC law and motion action requesting case dismissal.

EXHIBIT #4 response to Energizer Brand II LLC Motion to dismiss Play just cause of action dated 30th 2017 received and served on July 5, 2017 from Energizer Brand II LLC which proves Energizer Brand II LLC was making continue to make general appearances in United States District Court for Southern California District the case In which it at been served notice and responded making a general appearance

EXHIBIT # 5 Proof of personal service upon Energizer Brand II LLC Attorneys

DEFENDANT ENERGIZER BRANDS II LLC:

ATTY. KILPATRICK TOWNSEND & STOCKTON LLP

NANCY L. STAGG

Suite 400 12730

High Bluff Dr.

San Diego, CA 92130

Proof of Personal Service & Service By Mail :

I ROBY LISTER Did Personally Serve the Following Document On The Below name
defendants attorney of record via US MAIL.

DEFENDANT ENERGIZER BRANDS II LLC:
ATTY. KILPATRICK TOWNSEND & STOCKTON LLP
NANCY L. STAGG

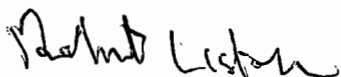
Suite 400 12730 High Bluff Dr.
San Diego, CA 92130

I did personally served the offices of the above attorneys for the above named defendant.
On 7/10/2017 by US MAIL

I ROBY LISTER did personally first class mail the above attorney's offices and I did cause
all other defendants to be served via US. Mail with the response of the Plaintiff as defined
herein.

I swear and affirm that the going is true and correct under the laws of the United States
of America. I am not a party to this cause of action. I am over the age of 18 years and
reside in Chula Vista CA.

7/10/2017



Mr. ROBY LISTER
356 Roosevelt St.
Chula Vista, CA 91910
619-253-9624